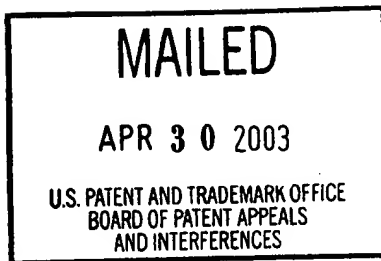


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte ANTHONY V. CRUZ

Appeal No. 2003-0240
Application No. 09/435,507

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 16, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention is directed to a portable electric hair dryer and mount therefor (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Andis	5,590,475	Jan. 7, 1997
Chan	5,857,263	Jan. 12, 1999

Claims 1 to 5, 8 to 12, 15 and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Andis.

Claims 6, 7, 13 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Andis in view of Chan.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 15, mailed July 29, 2002) for the examiner's complete reasoning in support

of the rejections, and to the brief (Paper No. 13, filed June 20, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We sustain the rejection of claims 1, 8, 15 and 16 under 35 U.S.C. § 102(b) but not the rejection of claims 2 to 5 and 9 to 12.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert.

denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claim 1

Claim 1 is readable on Andis as follows: A portable electric appliance and wall mount therefor comprising: a portable electric appliance (Andis' hair dryer 23) having an elongate handle (Andis' handle portion 25) and a power switch mounted on said handle (Andis' switch 21 mounted on handle portion 25), said power switch including an operating member which can be manually moved into a position to open said switch to deenergize the appliance (Andis' switch 21 includes a switch member 45 which can be manually moved into a position to open the switch to deenergize the hair dryer); and a wall mount (Andis' holder 17) comprising a one-piece, molded plastic body (Andis' holder 17 is fabricated or molded in one-piece from a plastic material) having a front face and a rear face (Andis' holder 17 has a front face (the face appearing in Figures 1 and 2) and a rear face (the face not shown in Figures 1 and 2, which face confronts the wall 13), said front face having a switch-engaging surface portion adapted to engage said switch operating member to open said switch as said appliance is assembled onto said wall mount in the event an attempt is made to assemble said appliance on said wall mount when said power switch is closed and said appliance is, therefore,

energized (the front face of Andis' holder 17 has a switch-engaging surface 95 adapted to engage the switch member 45 to open the switch 21 as the hair dryer is assembled onto the holder 17 in the event an attempt is made to assemble the hair dryer on the holder when the switch 21 is closed and the hair dryer is, therefore, energized).

In view of the above determination that claim 1 is readable on Andis, the appellant's argument (brief, p. 10) that the anticipation rejection is improper is unconvincing.

Since all the limitations of claim 1 are disclosed in Andis as set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed.

Claims 8, 15 and 16

The appellant has grouped claims 1, 8, 15 and 16 as standing or falling together.¹ Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 8, 15 and 16 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 8, 15 and 16 under 35 U.S.C. § 102(b) is also affirmed.

¹ See page 8 of the appellant's brief.

Claims 2 to 5 and 9 to 12

Claims 2 to 5 and 9 to 12 include the following limitations:

wherein said body comprises a pair of outwardly-extending, mutually-spaced clamp jaws partly separated from surrounding parts of said body, said appliance handle and said clamp jaws having cooperating projections and recesses, said clamp jaws being adapted to clamp said appliance handle therebetween with said switch operating member pressed against said front face of said wall mount when said projections enter said recesses.

We agree with the appellant's argument (brief, pp. 10-11) that the above-quoted limitations are not met by Andis. Andis' holder 17 includes a cradle or cradle portion 91 located between the socket 81 and the shelf 71. The cradle 91 includes a bottom wall 93, a pair of laterally spaced walls or surfaces 95 and 97 which extend forwardly from the bottom wall 93 and are located to embrace the intermediate part 31 of the handle portion 25 of the hair dryer 23. In our view, the claimed clamp jaws are not readable on Andis' laterally spaced walls or surfaces 95 and 97 since these walls do not clamp the handle portion 25 of the hair dryer 23 therebetween. Moreover, Andis' handle portion 25 and walls 95 and 97 do not have cooperating projections and recesses.

Since all the limitations of claims 2 to 5 and 9 to 12 are not disclosed by Andis for the reasons set forth above, the decision of the examiner to reject claims 2 to 5 and 9 to 12 under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection

We sustain the rejection of claims 6 and 13 under 35 U.S.C. § 103 but not the rejection of claims 7 and 14.

Claim 6

Claim 6 adds to parent claim 1 the further limitation that the "power cord extends outwardly from said handle." This limitation is clearly met by the electrical cord 39 which extends outwardly from handle portion 25 as shown in Figure 2 of Andis.

As set forth above, Andis teaches all the limitations of claim 6 and parent claim 1. While this is, in effect, a holding that claim 6 is anticipated by Andis under 35 U.S.C. § 102(b), affirmance of the 35 U.S.C. § 103 rejection is appropriate, since it is well settled that a disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Thus, the decision of the examiner to reject claim 6 under 35 U.S.C. § 103 is affirmed.

Claim 13

The appellant has grouped claims 6 and 13 as standing or falling together.² Thereby, in accordance with 37 CFR § 1.192(c)(7), claim 13 falls with claim 6. Thus, it follows that the decision of the examiner to reject claim 13 under 35 U.S.C. § 103 is also affirmed.

Claims 7 and 14

Claims 7 and 14 add to their respective parent claim the further limitation that said wall mount has slots at its lower end for receiving sections of said power cord so that at least part of said power cord is housed behind the front face of said wall mount, and wherein said socket^[3] has a back surface that forms a reel about which said power cord may be coiled.

In the rejection of claims 7 and 14, the examiner determined (answer, pp. 4-5) that (1) Andis lacked a power cord extending through a power cord slot and a reel for the power cord; (2) Chan taught a power cord extending through a power cord slot and a reel for the power cord; and (3) it would have been obvious to one having ordinary

² See page 8 of the appellant's brief.

³ There is no proper antecedent basis for "said socket." We understand "said socket" as referring to the socket as recited in claims 5 and 12 (i.e., the front face of the wall mount is recessed to provide a socket for receiving a housing containing working parts of the appliance and mounted on top of the handle). The appellant should amend claims 7 and 14 to provide proper antecedent basis for "said socket."

skill in the art at the time the invention was made to provide Andis with a power cord extending through a power cord slot and a reel for the power cord as taught by Chan.

However, even if Andis were modified to have a power cord extending through a power cord slot and a reel for the power cord as taught by Chan this would not arrive at the claimed subject matter.⁴ Clearly, the modification of Andis to have a power cord reel as taught by Chan would not include either (1) a wall mount having slots at its lower end for receiving sections of the power cord or (2) the power cord being housed behind the front face of the wall mount and wherein "said socket" has a back surface that forms a reel about which the power cord may be coursed.

For the reasons set forth above, the decision of the examiner to reject claims 7 and 14 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 5, 8 to 12, 15 and 16 under 35 U.S.C. § 102(b) is affirmed with respect to claims 1, 8, 15 and 16 and reversed with respect to claims 2 to 5 and 9 to 12; and the decision of the examiner to

⁴ A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

reject claims 6, 7, 13 and 14 under 35 U.S.C. § 103 is affirmed with respect to claims 6
and 13 and reversed with respect to claims 7 and 14.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART



IRWIN CHARLES COHEN
Administrative Patent Judge



JOHN P. McQUADE
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge

)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)
)

Appeal No. 2003-0240
Application No. 09/435,507

Page 11

ROGER S. DYBVIG
22 GREEN STREET
DAYTON, OH 45402

JVN/jg